

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

**Stella B. Werner Council Office Building
100 Maryland Avenue
Rockville, Maryland 20850
(240) 777-6600**

www.montgomerycountymd.gov/content/council/boa/index.asp

Case No. A-6286

PETITION OF FRANCISCO AND PATRICIA BARRERA

(Hearing held March 11, 2009)

OPINION OF THE BOARD

(Effective date of Opinion, April 14, 2009)

This proceeding is a petition pursuant to Section 59-A-4.11(b) of the Zoning Ordinance (Chap. 59, Mont. Co. Code 1994, as amended) for variances from Sections 59-C-3.56 and 59-C-3.55. The petitioners propose the construction of a two-story addition that requires a variance of eleven (11) feet as it reduces the distance between buildings to eight (8) feet, and a variance for the minimum lot size. The required distance between buildings is twenty (20) feet and the minimum lot size for the RMH-200 Zone is 6,000 square feet.

Isis and Randy Barrera, the petitioners' daughter and son, appeared with petitioners at the public hearing.

The subject property is Lot 14, Block B, Edinburgh Subdivision, located at 19402 Torran Rocks Terrace, Gaithersburg, Maryland, 20879, in the RMH-200 Zone (Tax Account No. 02510486).

Decision of the Board: Requested variance for two-story addition of eleven (11) feet **denied**.

A variance of one (1) foot for the existing single-family dwelling **granted**.

A variance of one (1) foot for a two-story addition **granted**.

A variance for the minimum lot size **granted**.

EVIDENCE PRESENTED TO THE BOARD

1. The petitioners propose the construction of a two-story addition.
2. Ms. I. Barrera testified that in December 2008 the petitioners filed for a building permit to construct a second-story addition and were notified by the Department of Permitting Services (DPS) that the subject property is limited

- to a one-story building height. The DPS notification stated that except on lots of 6,000 square feet or more, the maximum building height is limited to 24 feet and that the petitioners' lot is 5,805 square feet. Ms. I. Barrera testified that her father brought the subject property 23 years ago and that he was unaware that the lot was substandard.
3. Ms. I. Barrera testified that her parent's lot is on a cul-de-sac and that a unique characteristic of the subject property is that it has three easements that limit any horizontal expansion on the lot. Ms. I. Barrera testified that subject property must observe an 18-foot sewer line easement that is located in the eastern side yard, a 10-foot public utility easement and 15-foot slope easement, both located in the southern front yard. Ms. I. Barrera testified that the subject property is the only lot on the cul-de-sac that has these characteristics. See Exhibit Nos. 4(a) [site plan] and 11(a) [zoning vicinity map].
 4. Mr. R. Barrera testified that the subject property is an irregularly shaped lot, which narrows from front to rear. Mr. R. Barrera testified that most of the neighboring lots are irregular in size. Mr. R. Barrera testified that the existing house is does not meet the required setback for the distance between structures and that the house is currently sited 19 feet from the house on Lot 15. Mr. R. Barrera testified that the proposed construction would be in harmony with the other homes in the immediate neighborhood. See Exhibit Nos. 7(a)-7(b) [photographs].
 5. Ms. P. Barrera testified that the property's existing driveway is located in the eastern side yard and that the driveway was built by builder. Ms. P. Barrera testified that no other structures can be built in this area. Ms. I. Barrera testified that the petitioners have received the support of their neighbors and the approval of the Edinburgh Village Homeowners Association architectural committee for the proposed construction. See Exhibit Nos. 14(b) [letter of support from neighbors], 14(d) [Edinburgh Village Association Homeowners architectural committee approval].

FINDINGS OF THE BOARD

Based on the Petitioners' binding testimony and the evidence of record, the Board finds that the requested variance of eleven (11) feet from the required twenty (20) foot distance between mobile homes per Section 59-C-3.56 of the Zoning Ordinance does not comply with the applicable standards and requirements of Section 59-G-3.1 of the Zoning Ordinance, and cannot be granted, as follows:

- (a) *By reason of exceptional narrowness, shallowness, shape, topographical conditions, or other extraordinary situations or conditions peculiar to a specific parcel of property, the strict application of these regulations would result in peculiar or unusual practical difficulties to, or exceptional or undue hardship upon, the owner of such property;*

The Board finds that the subject property is an irregularly shaped lot. The Board finds that the subject property has an 18-foot public utility easement in its eastern side yard and that the easement severely limits the lot's buildable area. The Board finds that these are exceptional circumstances peculiar to the subject property. The Board further finds, however, that compliance of a second-story addition with the required twenty (20) foot separation between buildings is not precluded by the peculiarities of this lot, and thus finds that the requested eleven (11) foot variance from said separation cannot be granted.

Based on the Petitioners' binding testimony and the evidence of record, the Board finds that the requested variance from the 6,000 square foot minimum lot size requirement imposed by Section 59-C-3.55 of the Zoning Ordinance for second-story additions in the RMH-200 Zone complies with the applicable standards and requirements set forth in Section 59-G-3.1 of the Zoning Ordinance, and can be granted, as follows:

- (a) *By reason of exceptional narrowness, shallowness, shape, topographical conditions, or other extraordinary situations or conditions peculiar to a specific parcel of property, the strict application of these regulations would result in peculiar or unusual practical difficulties to, or exceptional or undue hardship upon, the owner of such property;*

As noted above, the Board finds that the subject property is an irregularly shaped lot. The Board finds that the subject property has an 18-foot public utility easement in its eastern side yard and that the easement severely limits the lot's buildable area. The Board finds that these are exceptional circumstances peculiar to the subject property. The Board further finds that because of this irregular shape and because of the severe limitations on the lot's buildable area, the strict application of Section 59-C-3.55 of the Zoning Ordinance to this property, which would preclude any upward expansion of this home, results in unusual practical difficulties to the Petitioners.

- (b) *Such variance is the minimum reasonably necessary to overcome the aforesaid exceptional conditions;*

The Board finds that the grant of a variance to allow the construction of a second-story addition to the existing home of this 5,905 square foot lot is the minimum reasonably necessary to overcome the aforesaid exceptional conditions.

- (c) *Such variance can be granted without substantial impairment to the intent, purpose and integrity of the general plan or any duly adopted and approved area master plan affecting the subject property; and;*

The Board finds that the construction of a second-story addition at the subject property will continue the residential use of the property and that

the variance will not impair the intent, purpose, or integrity of the general plan or approved area master plan.

(d) Such variance will not be detrimental to the use and enjoyment of adjoining or neighboring properties. These provisions, however, shall not permit the Board to grant any variance to any setback or yard requirements for property zoned for commercial or industrial purposes when such property abuts or immediately adjoins any property zoned for residential purposes unless such residential property is proposed for commercial or industrial use on an adopted master plan. These provisions shall not be construed to permit the Board, under the guise of variance, to authorize a use of land not otherwise permitted.

The Board finds that the proposed construction will not be detrimental to the use and enjoyment of the adjoining and neighboring properties.

Finally, based on the Petitioners' binding testimony and the evidence of record, the Board notes that Petitioner's existing home is separated by only nineteen (19) feet from the home on the lot to the west, one (1) foot less than the separation required by Section 59-C-3.56. The Board finds that the placement of the Petitioners' home on the subject property was dictated by the location of the sewer easement on the eastern side of that property, and that this is a constraint unique to this property which imposes a practical difficulty on the Petitioners. For these reasons and for the reasons stated above, namely that such variance is the minimum reasonably necessary, will not impair the intent, purpose or integrity of the general or master plan, and will not be detrimental to the use and enjoyment of neighboring property owners, the Board finds that it can grant a variance of one (1) foot from the required twenty (20) foot separation between the existing home and the home of the adjoining lot to the west.

Accordingly, the variance of eleven (11) feet from the required twenty (20) foot distance between buildings for the proposed construction of a two-story addition is denied. A variance of one (1) foot from the same twenty (20) foot separation requirement, necessary to accommodate the existing house in its existing location; a variance of one (1) foot from the required twenty (20) foot separation distance between buildings for the construction of a two-story addition; and a variance from the applicability of the minimum lot size requirement of Section 59-C-3.55, necessary to allow the construction of a two-story addition on the subject property, are granted subject to the following conditions:

1. The petitioners shall be bound by all of their testimony and exhibits of record, and the testimony of their witnesses, to the extent that such evidence and representations are identified in the Board's Opinion granting the variances.
2. Construction must be completed in accordance with plans that comply with the separation distance set forth in Section 59-C-3.56 of the Zoning Ordinance, except to the extent that distance is modified by this Opinion. In accordance with this Opinion, such plans may include a second-story,

provided the finished height of the home does not exceed twenty-four (24) feet, per Section 59-C-3.55 of the Zoning Ordinance.

The Board adopted the following Resolution:

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland, that the Opinion stated above be adopted as the Resolution required by law as its decision on the above entitled petition.

On a motion by David K. Perdue, seconded by Catherine G. Titus, Chairman, with Carolyn J. Shawaker, Walter S. Booth and Stanley B. Boyd, in agreement, the Board adopted the foregoing Resolution.

David K. Perdue
Vice Chairman, Montgomery County Board of Appeals

I do hereby certify that the foregoing Opinion was officially entered in the Opinion Book of the County Board of Appeals this 14th day of April, 2009.

Katherine Freeman
Executive Director

NOTE:

See Section 59-A-4.53 of the Zoning Ordinance regarding the twelve (12) month period within which the variance granted by the Board must be exercised.

The Board shall cause a copy of this Opinion to be recorded among the Land Records of Montgomery County.

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date of the Opinion is mailed and entered in the Opinion Book (see Section 59-A-4.63 of the County Code). Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County in accordance with the Maryland Rules of Procedure.

It is each party's responsibility to participate in the Circuit Court action to protect their respective interests. In short, as a party you have a right to protect your interests in this matter by participating in the Circuit Court proceedings, and this right is unaffected by any participation by the County.